Supreme Court, U.S.
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No. 90-1863

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

WALKER L. CHANDLER and CAROLE ANN RAND,
Petitioners,
vs.
GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITIONERS' REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

Respondent Georgia Public Telecommunications Commission ("GPTC") asserts in its responsive brief that because the debates which form the subject matter of this case have already occurred, the case is moot. GPTC avers that "[t]he doctrine of 'capable of repetition yet evading review' simply does not apply in this case." GPTC Brief at 10. This assertion is incorrect.

The Court has considered the question of mootness as specifically applied to cases involving candidates for political office. In Moore v. Ogilvie, 394 U.S. 814 (1969), the appellants were independent candidates from Illinois for the offices of electors of President and Vice President of the United States. The appellants challenged the Illinois statutes concerning petition requirements for such candidates.

The appellees sought to dismiss the action on the grounds that the election in question had already been held, and because the relief sought by the appellants could not be granted. In determining that the case was not moot, the Court stated that:

> while the 1968 election is over, the burden which MacDougald v. Green, supra, allowed to be placed on the nomination of candidates for statewide offices remains, and controls future elections, as long as Illinois maintains her present system as she has done since 1935. The problem is therefore "capable of repetition, yet evading review," Southern Pacific Terminal Co. v. I.C.C., 219 U.S. 498, 515 (1911). The need for its resolution thus reflects a continuing controversy in the federal-state area where our "one man, one vote" decisions have thrust.

Moore, 394, U.S. at 816.

The Court also decided two cases in 1974 which addressed the mootness question in the context of political

candidates. In Storer v. Brown, 415 U.S. 724 (1974) the Court considered a California Elections Code provision dealing with independent candidates for public office. The Court stated that:

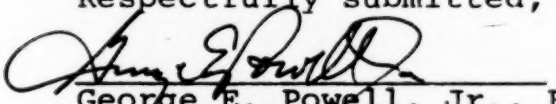
> [t]he 1972 election is long over, and no effective relief can be provided to the candidates or voters, but this case is not moot, since the issues properly presented, and their effects on independent candidacies, will persist as the California statutes are applied in future elections. This is, therefore, a case where the controversy is "capable of repetition, yet evading review."

Id. at 737, n. 8 (citations omitted). The Court reached the same conclusion in American Party of Texas v. White, 415 U.S. 767, 770, n. 1 (1974), a case interpreting the constitutionality of the ballot provisions of the Texas Election Code.

The Court's analysis in those cases is applicable to the case at bar. Although the debates at issue have

already occurred, the legal issue involved here will arise each time debates are broadcast prior to elections for public office and third-party candidates seek to participate in those debates. Because of the extremely short time window - two to four days prior to the election for the debates in the instant case - there will never be enough time to adjudicate the issue before the election passes and debate participation becomes purportedly moot. This case is precisely the kind of matter which is "capable of repetition, yet evading review," and therefore the Court should consider the case on its merits.

Respectfully submitted,



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